

ALASKA

Leading case in the best interest of a child in Alaska

Evans v. McTaggart 88 P.3d 1078 (2004) Supreme Court of Alaska.

How best interest factors are applied in custody

Alaska judges decide custody based on what is in the child's best interest. Alaska courts do not give preference to one parent over the other because of their sex. Instead, the judge must consider all of the following factors when determining custody:

- the child's physical, emotional, mental, religious, and social needs
- each parent's ability to meet the child's various needs
- the child's relationship with each parent
- the stability of the child's current home environment
- each parent's willingness to encourage a close relationship between the child and the other parent
- either parent's history of domestic violence or sexual assault
- the effect of other people living in either parent's household
- the substance abuse history of anyone living in either parent's household
- the child's preference, if the child is of sufficient age and ability to form an opinion, and
- any other factors the court finds relevant. (Alaska Stat. § 25.24.150 (c).)

Generally, none of these factors take precedence over others. The exception is when a parent has a history of domestic violence against the other parent or the child; the court will presume that the child is better off with the non-violent parent unless proven otherwise. (Alaska Stat. § 25.24.150 (g)).

Modification of custody in Alaska

Section A,

An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

When making a determination relating to child custody under (a) of this section, the court shall consider the past history of the parents with respect to their compliance with the child support payment provisions of temporary or permanent support orders or agreements relating to the child or to other children. Under this subsection, the court may consider a parent's failure to pay child

support only if the parent had actual knowledge of the amount of the child support obligation and had funds available for payment of support or could have obtained those funds through reasonable efforts, as determined by the court. In a proceeding involving the modification of an award for custody of a child or visitation with a child, a finding that a crime involving domestic violence has occurred since the last custody or visitation determination is a finding of a change of circumstances under (a) of this section.

Requirements for Relocation-Custody in Alaska

Relocation is more than a move to a different neighborhood. Generally, a noncustodial parent can object to the other parent's move if it impacts visitation. For example, one parent's move to a new neighborhood 15 minutes away won't impact visitation, but a move 1500 miles away will. A nonmoving parent can seek to modify custody based on the other parent's move. One parent's relocation constitutes a change in circumstances, which is necessary to modify custody. Nevertheless, the nonmoving parent bears the burden of proving that a change in custody is in the child's best interests. For example, in one Alaska case, a father properly sought to change custody based on the mother's proposed move out of state. Ultimately, the court refused to modify custody arrangements because the father couldn't show that the move would negatively impact the child.

In another Alaska case, a judge denied a father's preliminary injunction request to prevent the child's mother from moving out of state. The mother stated that her move was to pursue her education, work fewer hours, and ultimately spend more time with her children. Because the children's father could not show that the move would harm the children, the court denied his request to prevent the move.

Parental alienation in Alaska

Alaska courts favor awarding custody to a cooperative parent who is willing to work together with the other parent regarding child visitation, scheduling, child support, and other co-parenting matters. Alaska law favors co-parenting as being in the best interests of the child, and the courts will favor a parent willing to cooperate over a parent who attempts to alienate their child from the other parent.

Do the courts in the state of Alaska have the right to hire an attorney or Guardian Ad Litem to represent the child?

Alaska has statutory authority for the appointment of a guardian ad litem or attorney specifically to represent the child in a custody case. This person advocates for the best interest of the child and is tasked with investigating the family situation and advising the court on what custody situation would be in the best interests of the child.

Matters of Judge Recusal in Alaska

Rule 25 - Judge-Disqualification or Disability

(a) Before Trial. Where a judge of the superior court is disqualified or for any other reason is unable to sit in the trial or hearing of any pending matter, the presiding judge or the chief justice

of the supreme court shall designate another judge of the judicial district in which the matter is pending, or a judge temporarily assigned thereto, to hear the matter.

(b) During Trial. If a judge holding superior court be prevented during a trial from continuing to preside therein, the presiding judge or the chief justice of the supreme court shall designate another judge of the superior court to sit in such court to complete such trial, as if such other judge had been present and presiding from the commencement of such trial, provided, however, that from the beginning of the taking of testimony at such trial a stenographic or electronic record of such trial shall have been made so that the judge so continuing may become familiar with the previous proceedings at such trial.

(c) After Verdict. If by reason of absence from the district, death, sickness or other disability, the judge before whom the action has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if the other judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial.

(d) Change of Judge as a Matter of Right. In all courts of the state, a judge may be peremptorily challenged as follows:

(1) Entitlement. In any criminal case in a superior or district court, the prosecution and the defense shall each be entitled as a matter of right to one change of judge. When multiple defendants are unable to agree upon the judge to hear the case, the trial judge may, in the interest of justice, give them more than one change as a matter of right; the prosecutor shall be entitled to the same number of changes as all the defendants combined.

(2) Procedure. A party may exercise the party's right to a change of judge by filing a "Notice of Change of Judge" signed by counsel, if any, stating the name of the judge to be changed. The notice shall neither specify grounds nor be accompanied by an affidavit. The notice of change of judge is timely if filed within five days after notice that the case has been assigned to a specific judge. If a party has moved to disqualify a judge for cause within the time permitted for filing a notice of change of judge, such time is tolled for all parties and, if the motion to disqualify for cause is denied, a new five-day period runs from notice of the denial of the motion.

(3) Re-Assignment. When a request for a change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury before the action can be transferred to another judge. However, if the named judge is the presiding judge, the judge shall continue to perform the functions of the presiding judge.

(4) Timeliness. Failure to file a timely request precludes a change of judge under this rule as a matter of right.

(5) Waiver. A party loses the right under this rule to change a judge when the party, after a reasonable opportunity to consult with counsel, agrees to the assignment of the case to a judge or knowing that the judge has been permanently assigned to the case, participates before the judge

in an omnibus hearing, any subsequent pretrial hearing, a hearing under Rule 11, or the commencement of trial. No provision of this rule shall bar a stipulation as to the judge before whom a plea of guilty or of nolo contendere shall be taken under Rule 11.

Attorney Ethics in Alaska

Found under the;

1. Alaska Rules of Professional Conduct
2. Rules of Disciplinary Enforcement (Alaska Bar Rules)
3. Standing Policy on Informal Ethics Guidance

Rules on the conduct of Judges

<http://courts.alaska.gov/rules/docs/cjc.pdf>

GAL in Alaska

Guardian ad litem (usually called GAL for short) is a person appointed by a judge to speak for a child's best interests during a court case. A GAL may be an attorney but does not have to be. In court, the GAL may ask questions of other people who are giving information and may also answer questions about what the GAL believes is best for the child.

Rules of Evidence and Procedure in Alaska

<http://courts.alaska.gov/rules/docs/ev.pdf>

<http://courts.alaska.gov/rules/docs/civ.pdf>